divergent rulings have emerged from the courts of appeal concerning this and related questions.[6] Such conflicts, involving significant issues in the administration of the Act, should be resolved by this Court in the exercise of its "general power to supervise the administration of justice in the Federal Courts." *Western Pacific R. Corp.* v. *Western Pacific R. Co.*, 345 U.S. 247, 260.

B. The Decision of the Court Below Hinders the Public Interest by Suppressing Evidence and Argument Before the Courts in 10(l) Proceedings.

If the decision of the court below is allowed to stand, one of the essential objectives of the Act will be frustrated to the detriment of the public interest. Congress entrusted the keys of the closely-guarded labor injunction to the federal district courts in much the same fashion that enforcement of Board orders was reposed in the courts of appeal. That grant of judicial authority was predicated upon the explicit premise that all parties would have unrestricted opportunity to inform the court, by evidence and argument, of all relevant considerations in a given case. This division of responsibility was acknowledged by the Board and expressly recognized by the Court in *Scofield* where it was stated:

> "In fact, the Labor Board itself agrees that intervention by charged parties will not impair

[6] To give one example: in contrast to the ruling of the Court of Appeals here, the Ninth Circuit has affirmed the issuance of an injunction under Section 10(l) at the urging of the charging party and over the objection of the Board where the charging party "merely supported the original petition for injunctive relief requested by the Regional Director". *Retail Clerk's Union, Local 137, et al.* v. *Food Employers Council, Inc.*, 351 F. 2d 525 (9th Cir. 1965).

> effective discharge of its duties and may well promote the public interest . . . Participation in defining the issues before the court guarantees that all relevant material is brought to its attention, and makes the briefs on the merits more meaningful."

There can be no logical reason for applying the *Scofield* doctrine to one stage of an unfair labor practice proceeding but refusing, as did the court below, to apply it to closely-related injunction sections. If anything, the more logical postulate is that Congress wanted the fullest possible exposure of facts and arguments in light of the limited time available to the court for consideration of its ruling in a 10(l) proceeding and the overriding concern of Congress regarding the need for relief for such violations. Thus, the decision of the Eighth Circuit denying the charging party either the status of a "party" or the right of intervention is clearly contrary to the public interest facet of the statutory scheme and, accordingly, review by this Court is fully warranted.

C. The Decision of the Court Below Departs from the Better-Reasoned Precedent.

The decision of the Ninth Circuit Court of Appeals in *Retail Clerk's Union, Local 137, et al.* v. *Food Employers Council, Inc.,* 351 F.2d 525 (9th Cir. 1965), fully and logically supports the position of the Petitioners here. In that decision, the court reasoned that, since the charging party was only attempting to "support the position of the Regional Director" and was not seeking to "initiate the litigation," the Norris-LaGuarda Act presented no obstacle. Here also, Petitioners are merely seeking to support the position of

the Regional Director who has initiated the appeal and the Norris-LaGuardia Act should not be read as obstructing such participation.

Review is warranted here for the additional reason that, as this Court held last term in *Boys Markets, Inc.* v. *Retail Clerk's Union, Local 770,* 398 U.S. 235, the earlier enacted provisions of the Norris-LaGuardia Act must be accommodated to the subsequent amendments to the National Labor Relations Act. In enacting Section 10(l), Congress expressed a clear purpose of protecting the neutral employer from the disruptive effects of unlawful union picketing. The participatory rights granted neutral employers by the explicit terms of Section 10(l) reflects the judgment of Congress that the prosecutorial efforts of the Board's General Counsel alone would not guarantee such protection. As in *Boys Markets,* the earlier enacted provisions of the Norris-LaGuardia Act cannot be interpreted here as contravening this clear congressional objection by stifling the neutral employer's right to participate at all stages of 10(l) injunctive proceedings. Rather, as the Court said in *Boys Markets,* it is "the task of the courts to accommodate, to reconcile the older statutes with the more recent ones." The court below failed to reach such an accommodation, and, accordingly, review by this Court is now necessary.

CONCLUSION

For the foregoing reasons, as well as for those urged by the Petitioner, the National Chamber urges this Court to grant the petition for a Writ of Certiorari.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1598

SEARS, ROEBUCK AND CO.
and
TERMINAL FREIGHT COOPERATIVE ASSOCIATION and
TERMINAL FREIGHT HANDLING CO.,
Petitioners,
vs.
JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board
and
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF

In Opposition of Respondent Union

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IN THE

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OCTOBER TERM, 1970

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TERMINAL FREIGHT COOPERATIVE ASSOCIATION and
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Petitioners,

vs.

JOSEPH H. SOLIEN, Regional Director of the Fourteenth Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board
and
MISCELLANEOUS DRIVERS AND HELPERS UNION, LOCAL NO. 610 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF

In Opposition of Respondent Union

OPINIONS BELOW

The citations to the Opinions Below are adequately set forth in the Petition for a Writ of Certiorari.

JURISDICTION

The jurisdictional requirements are adequately set forth in the Petition for Certiorari.